United Nations A/57/733–S/2003/182

General Assembly
Security Council

Distr.: General
14 February 2003

Original: English

General Assembly
Fifty-seventh session
Agenda item 14
Report of the International Atomic Energy Agency

Security Council
Fifty-eighth year

Identical letters dated 14 February 2003 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I have the honour to convey the attached communication, dated 12 February 2003, from the Director General of the International Atomic Energy Agency (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly and of the Security Council.

(*Signed*) Kofi A. **Annan**

03-24944 (E) 140203

Annex

Letter dated 12 February 2003 from the Director General of the International Atomic Energy Agency addressed to the Secretary-General

I have the honour to refer to the implementation of the Safeguards Agreement between the Democratic People's Republic of Korea and the International Atomic Energy Agency pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

On 12 February 2003, the Agency's Board of Governors declared that the Democratic People's Republic of Korea was in further non-compliance with its obligations under its Safeguards Agreement pursuant to the NPT. The Board decided, as provided for in article XII.C of the Agency's Statute, to report, through the Director General, the non-compliance of the Democratic People's Republic of Korea and the Agency's inability to verify non-diversion of nuclear material that is subject to safeguards to all members of the Agency and to the Security Council and the General Assembly of the United Nations. The Board's resolution is attached to this letter (see enclosure).

I should be grateful if you would bring the present letter and its enclosure to the attention of all Members of the General Assembly and of the Security Council.

(*Signed*) Mohamed **ElBaradei**

Enclosure

Report by the Director General on the implementation of the Safeguards Agreement pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons between the Agency and the Democratic People's Republic of Korea

Resolution adopted by the Board on 12 February 2003

The Board of Governors,

(a) Recalling its resolutions GOV/2636, GOV/2639, GOV/2645, GOV/2692, GOV/2711 and GOV/2742, and General Conference resolutions GC(XXXVII)/RES/624, GC(XXXVIII)/RES/16, GC(39)/RES/3, GC(40)/RES/4, GC(41)/RES/22, GC(42)/RES/2, GC(43)/RES/3, GC(44)/RES/26, GC(45)/RES/16, and GC(46)/RES/14,

(b) Also recalling its resolution GOV/2002/60 of 29 November 2002 and resolution GOV/2003/3 of 6 January 2003, and noting that the Democratic People's Republic of Korea (DPRK) has rejected those resolutions and the efforts of the Director General to institute a dialogue pursuant to them,

(c) Confirming that the Agency's Safeguards Agreement with the DPRK pursuant to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) remains binding and in force and that it is essential and urgent that the DPRK enable the Agency to take the necessary measures to ensure verification of compliance with that Agreement,

(d) Having considered the report of the Director General (GOV/2003/4) and in particular paragraph 10 which states that the Secretariat remains unable to verify, in accordance with the DPRK's NPT Safeguards Agreement, that there has been no diversion of nuclear material in the DPRK, and

(e) Taking account of the rights and obligations under that Agreement,

1. Expresses deep concern that the DPRK has not undertaken to co-operate urgently and fully with the Agency, and has not taken the necessary steps called for in resolution GOV/2003/3, and calls upon it to do so urgently;

2. Expresses deep concern also that the Agency is not able to verify that there has been no diversion of nuclear material subject to safeguards to nuclear weapons or other nuclear explosive devices;

3. Declares, based on the report of the Director General, that the DPRK is in further non-compliance with its obligations under its Safeguards Agreement with the Agency;

4. Calls upon the DPRK to remedy urgently its non-compliance with its Safeguards Agreement by taking all steps deemed necessary by the Agency;

5. Decides to report, as provided for in Article XII.C. of the Statute, through the Director General, the DPRK's non-compliance and the Agency's inability to verify non-diversion of nuclear material subject to safeguards, to all Members of the Agency and to the Security Council and General Assembly of the United Nations; and in parallel stresses its desire for a peaceful resolution of the DPRK nuclear issue and its support for diplomatic means to that end;

6. Requests the Director General to continue his efforts to implement the Agency's comprehensive Safeguards Agreement with the DPRK and to keep the Board informed of any significant developments; and

7. Decides to remain seized of the matter.

United Nations A/57/734

General Assembly

Distr.: General
18 February 2003

Original: English

Fifty-seventh session
Agenda item 33
Causes of conflict and the promotion of durable peace and sustainable development in Africa

Letter dated 7 February 2003 from the President of the Economic and Social Council addressed to the President of the General Assembly

I wish to submit to you the report of the Ad Hoc Advisory Group on Guinea-Bissau, set up by the Economic and Social Council in October 2002. The report (E/2003/8) was submitted to the Council on 15 January 2003. Having considered it, the Council adopted a resolution on 31 January (2003/1) at its organizational session, by which it welcomed the recommendations contained in the report.

As you know, the Council, in its resolution 2002/1, decided on the principle of creating such an Ad Hoc Advisory Group following the adoption of General Assembly resolution 55/217 of 21 December 2000 on the causes of conflicts and the promotion of durable peace and sustainable development in Africa. In paragraph 7 of its resolution, the Assembly requested the Council to consider "the creation of an ad hoc advisory group on countries emerging from conflict, with a view to assessing their humanitarian and economic needs and elaborating a long-term programme of support for implementation that begins with the integration of relief into development".

The creation of the Group by the Council and the outcome of its work testify to the importance of ensuring interaction between our two bodies. As the Council decided to extend its mandate, the Group will now assess on a continuing basis the implementation of its recommendations, until the substantive session of the Council in July 2003.

I would be grateful if the present letter could be circulated as a document of the General Assembly.

(*Signed*) Gert **Rosenthal**

03-25208 (E) 200203

United Nations A/57/735

General Assembly

Distr.: General
18 February 2003

Original: English

Fifty-seventh session
Agenda items 111 and 118

Review of the efficiency of the administrative and financial functioning of the United Nations

Human resources management

Gratis personnel provided by Governments and other entities

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on gratis personnel provided by Governments and other entities (A/57/721). During its consideration of the report, the Committee met with representatives of the Secretary-General who provided additional information.

2. The Advisory Committee recalls that the General Assembly, in paragraph 12 of its resolution 51/243 of 15 September 1997, requested the submission of annual reports on the use of gratis personnel, indicating, inter alia, their nationality, the duration of their service and the functions performed. The report of the Secretary-General, which updates the information contained in the previous report on the subject (A/56/839), covers the period from 1 January to 31 December 2002.

3. The report indicates a total number of 301 type I gratis personnel (142 interns, 124 associate experts, 35 technical cooperation experts) as of 31 December 2002 (A/57/721, table 1).

4. The report also indicates the existence of one type II gratis personnel in service as at 31 December 2002 (ibid., table 2). A total of three such personnel were reported as at 31 December 2001 (A/56/839, table 2).

5. **In view of the steps taken pursuant to General Assembly resolution 51/243 for the management of the employment of gratis personnel and the phasing out of the number of such personnel since the adoption of the resolution, the Advisory Committee is of the opinion that the Secretary-General should now be requested to provide this type of information in the context of his report on the composition of the Secretariat, submitted on a biennial basis. Furthermore, the information contained in the report regarding type I gratis personnel (A/57/721, table 1) should be expanded to include nationality, duration and functions performed.**

03-25163 (E) 200203

United Nations A/57/736

General Assembly

Distr.: General
18 February 2003

Original: English

Fifty-seventh session
Agenda item 123
Administration of justice at the United Nations

Administration of justice in the Secretariat

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the administration of justice in the Secretariat (A/56/800). The Committee also had before it the report of the Joint Inspection Unit on reform of the administration of justice in the United Nations system: options for higher recourse instances (JIU/REP/2002/5), which was transmitted by the Secretary-General in document A/57/441, as well as the comments thereon of the Secretary-General and of the United Nations System Chief Executives Board for Coordination (A/57/411/Add.1) and of the United Nations Administrative Tribunal (A/C.5/57/25). During its consideration of the item, the Committee met at various times with representatives of the Secretary-General and members of the Administrative Tribunal and the Chief Executives Board.

2. The report of the Secretary-General was submitted pursuant to General Assembly resolution 55/258 of 14 June 2001, in which the Assembly requested the Secretary-General to, inter alia, review the role of the Joint Appeals Board and the difference between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of the International Labour Organization (ILO) with regard to specific performance of an obligation and compensation limits.

Joint Appeals Board

3. The request for the Secretary-General to review the Joint Appeals Board is contained in section XI, paragraph 4 of General Assembly resolution 55/258. **For the reasons stated in the report of the Secretary-General (A/56/800, paras. 15-21), the Advisory Committee agrees that there is no need to change the nature of the Board. The Committee recommends acceptance of the proposal of the Secretary-General in paragraph 21 of his report, which is to "maintain the positive elements of the current system, that is, advice provided by a joint body of peers, and to rectify the problems currently experienced by that system".**

03-25169 (E) 200203

4. In paragraph 5 of the report, the Secretary-General proposes to amend staff rule 111.1 (b) (i) to provide for joint selection of the chairpersons of the Joint Appeals Board by staff and management. **The Advisory Committee recommends acceptance of this amendment, which reflects current informal practice.**

5. **The Advisory Committee agrees with the conclusion contained in the report of the Secretary-General (A/56/800, para. 8) that there is no need to strengthen the current advisory function of the Joint Appeals Board with regard to suspension of action on a contested administrative decision.**

6. The issue of the time available for the Joint Appeals Board to produce its report is examined in the report of the Secretary-General (A/56/800, paras. 9-11). As is apparent from the comments in those paragraphs, the handling of appeals to the Board is currently fraught with unacceptable delays. **The Advisory Committee therefore welcomes the fact that the Secretary-General has requested OIOS to conduct a management review of the entire appeals process in order to identify the causes of the delays and to make proposals to remedy the situation (A/56/800, para. 11).**

7. **The Advisory Committee requests that the study should include a review of whether the provision of a full-time chairperson of the Joint Appeals Board would contribute to expediting the handling of cases. OIOS should also attempt to quantify the cost of a comparative set of selected cases from the beginning to the time those cases are completed at the Administrative Tribunal and to ascertain whether a strategic increase of the resources available at any particular stage of a case would ultimately lead to a speedier handling of the cases concerned, thereby reducing the overall level of staff time and other resources devoted to the appeals process. Such quantification should include the loss of workdays by staff and management that could otherwise be used to implement work programmes. Subject to the need to protect the rights of both the appellant and the respondent, OIOS should examine the extent to which limitations could be placed on the frequency allowed to the parties to submit written pleadings and counterclaims (see A/56/800, para. 10 (ii)).**

8. With regard to the amendment to staff rule 110.4 in connection with due process, the Advisory Committee notes from the report of the Secretary-General (A/56/800, annex I) that the amended text does not require that the notification of the allegations against the staff member be in writing. **The Committee recommends that the amendment should provide for written notification.**

United Nations Administrative Tribunal

9. The differences between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of ILO are discussed in the report of the Secretary-General (A/56/800, paras. 35-43). As indicated in paragraph 38 of the report, under the statute of the ILO Administrative Tribunal "it is the Tribunal itself that decides whether a rescission or performance 'is not possible or desirable', in which case it awards the applicant monetary compensation (not subject to any specific limits ...)". In respect of the United Nations Administrative Tribunal, the Tribunal fixes, "as part of its original judgement, an amount of compensation to be paid to the applicant (subject to a conditional limit ...), leaving it to the Secretary-General to decide whether 'in the interest of the United Nations' he prefers to

comply with the order for rescission or performance, or to pay the amount indicated by the Tribunal".

10. The Advisory Committee recalls its comment in its previous report (A/55/514, para. 10) that "the inability of the Administrative Tribunal to order specific performance seriously limits the staff's rights to redress. Although this gap has existed since the inception of the Tribunal, the Committee believes that time has come to consider closing it, especially when a number of other far-reaching reforms in the area of human resources management are being considered".

11. In its resolution 55/258 (sect. XI, para. 7), the General Assembly took note of the observations of the Advisory Committee that there was "a gap" between the statutes of the United Nations Administrative Tribunal and the Administrative Tribunal of ILO with respect to specific performance of an obligation and compensation limits, and requested the Secretary-General to take necessary measures to "close the gap" as appropriate between the statutes of the two Tribunals.

12. In its comments on the report on the administration of justice in the United Nations, the United Nations Administrative Tribunal concludes, inter alia, that in view of "the overwhelming support of various United Nations bodies and organs for the need to close the gap between the two Tribunals, and taking into account the far-reaching reforms in the area of human resources management that are taking place in the United Nations system, the United Nations Administrative Tribunal strongly recommends that the General Assembly amend article 9 of its statute with a view to closing the gap between the statutes of the two Tribunals and removing the restrictions on the authority of the United Nations Administrative Tribunal" (A/C.5/57/25, annex II, para. 4).

13. **Whether or not the General Assembly endorses the views of the United Nations Administrative Tribunal on specific performance, the Advisory Committee recommends that the Tribunal be strengthened through an amendment to its statute requiring that candidates for the Tribunal possess judicial experience in the field of administrative law or its equivalent in the candidate's national jurisdiction. This change would obviate the need for the third tier, which had been recommended by the Joint Inspection Unit.**

14. If the statute of the United Nations Administrative Tribunal is amended in the manner indicated above, **the Advisory Committee recommends that the appointment continue to be done directly by the General Assembly in plenary.**

15. In connection with compensation of judges at the Administrative Tribunal of ILO and members of the United Nations Administrative Tribunal, the Advisory Committee was informed, upon enquiry, that the judges at the Administrative Tribunal of ILO receive the "usual" subsistence allowance (that is, not at the Under-Secretary-General level, as do members of the United Nations Administrative Tribunal) and a fee based on the number of cases dealt with annually. The judges get $1,500 for each case they draft and $375 (one-fourth) for each case at which they sit as a panel member and sign. In addition to travel and daily subsistence allowance expenses, members of the United Nations Administrative Tribunal now receive an honorarium of $1 per year.

16. Should the General Assembly accept the Advisory Committee's recommendation in paragraph 13 above on judicial qualifications, proposals could be made by the Secretary-General regarding compensation.

United Nations A/57/737

General Assembly

Distr.: General
19 February 2003
English
Original: Russian

Fifty-seventh session
Agenda item 160
Measures to eliminate international terrorism

Letter dated 12 February 2003 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

With reference to your note of 31 January 2003, I have the honour to transmit to you for inclusion in your report to the Security Council a memorandum from the Russian Federation, in conformity with paragraph 12 of the declaration on the issue of combating terrorism contained in Security Council resolution 1456 (2003) (see annex).

I should be grateful if you could have this letter and its annex* circulated as a document of the General Assembly under agenda item 160 and of the Security Council.

(*Signed*) Sergei **Lavrov**

* Previously issued in S/2003/191.

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